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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirtieth session

SUMMARY RECORD OF THE 546th MEETING

Held at Headquarters, New York,
on Friday, 5 April 1991, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.45 a.m.

THE ELABORATION OF DRAFT PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE, WITH THE AIM OF FINALIZING THE DRAFT SET OF PRINCIPLES

1. The CHAIRMAN, introducing agenda item 3, reviewed the work done thus far: with regard to the Legal Subcommittee, the report of the Chairman of the Working Group on agenda item 3 was contained in annex I of the report of the Subcommittee on the work of its twenty-ninth session (A/AC.105/457) and, in the body of the report, the question was dealt with in section I. That document also contained various working papers submitted on the topic. Further progress had been made during the latest session of the plenary Committee on the Peaceful Uses of Outer Space, whose work on the subject was outlined in paragraphs 100 to 111 and 142 (a) of its report (A/45/20). At that session of the Committee, the delegations of Canada and the Federal Republic of Germany had submitted a working paper on nuclear power sources (A/AC.105/C.2/L.154/Rev.7), contained in annex II to the Committee's report. The question had also been considered in the Scientific and Technical Subcommittee in February and March 1991, and the discussions were summarized in section IV of that Subcommittee's report (A/AC.105/483).

2. The General Assembly, in resolution 45/72, had recommended that the Legal Subcommittee, at its thirtieth session, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its Working Group, the elaboration of draft principles relevant to the use of nuclear power sources in outer space, with the aim of finalizing the draft set of principles. At the opening of the session, the Subcommittee had re-established its Working Group on agenda item 3, under the chairmanship of the representative of Austria, Mr. Winkler.

3. Mr. KHABIROV (Union of Soviet Socialist Republics) observed that the Legal Subcommittee's work on nuclear power sources was stalled. There were several reasons for that, especially the lack of political will on the part of some delegations, but some were also objective reasons, such as the need to give a scientific and technical basis to the legal principles elaborated by the Subcommittee. There had nevertheless been considerable progress in recent years. All the essentials of the basic principles relevant to the use of nuclear power sources in outer space were a subject of general agreement, although some problems remained to be settled.

4. A case in point was the draft principle on notification. The Soviet Union, acting in a spirit of transparency and openness and taking account of the opinion of the overwhelming majority of delegations, had approved it. Better yet, it had proposed including in draft principle 2 a provision to the effect that the launching State should submit to the Secretary-General of the United Nations, within the framework of the procedures established by the Convention on Registration of Objects Launched into Outer Space, supplementary information on cases in which space objects with a nuclear power source on board that were no longer in operation were put into a disposal orbit or any

(Mr. Khabirov, USSR)

orbit other than the one originally assigned to it. As his delegation had stated at the latest session of the Scientific and Technical Subcommittee, it would be useful, for the purpose of better determining the object's area of accidental re-entry into the dense layers of the atmosphere, to draw up a list of data on the parameters of the flight trajectory of objects with a nuclear power source on board before they accidentally re-entered the atmosphere, and to set up a procedure for exchanging such information.

5. Some delegations found the principle of notification superfluous. The Soviet Union disagreed, but noted that others who used to insist on the need for it seemed to have changed their position. That being the case, his delegation would not stand in the way of consensus on draft principle 2.

6. The adoption by consensus of draft principle 3 had fostered the expectation that the elaboration of the draft principles relevant to the use of nuclear power sources could be completed at the current session. His delegation saw no justification for reopening discussion of an already adopted draft principle, but was ready to show flexibility in that respect, and if the Subcommittee as a whole thought it possible to resume consideration of an already adopted draft principle, it would participate. The earlier the better, but if such consideration was resumed at the current session, his delegation would only be able to make provisional comments.

7. The Soviet Union had nothing against periodically making documents on safety assessments of the use of nuclear power sources publicly available, and it was prepared to make public the results of safety assessments covering all relevant phases of the flights of space objects. Moreover, and most importantly, it was ready to do so prior to each launch. It unreservedly supported the proposal that information on how the publicly available assessment might be obtained should be provided to the Secretary-General. With regard to the document itself providing detailed information on the safety assessment, it could be furnished upon request to interested States. As other members of the Subcommittee had pointed out, the documentation in question would be extremely voluminous, containing an assessment of accident probabilities and various parameters allowing for an evaluation of the implications of an accident, and an assessment of the results of calculations, experiments and tests made on nuclear power sources. At the latest session of the Scientific and Technical Subcommittee, the Soviet Union had proposed focusing on defining the contents of the safety assessment to be made public.

8. In an effort to find the best solution to the issues of responsibility and of compensation for damage caused by space objects with a nuclear power source on board, his delegation had proposed considering the possibility of giving binding force to the decisions of a special commission for the settlement of compensation claims. In its view, it would be useful to make draft principle 9 more specific by adopting a special provision stipulating that any disputes should be brought before the International Court of Justice, whose decisions would be considered binding. To judge from the reactions to

(Mr. Khabirov, USSR)

that proposal, not all the members of the Subcommittee were yet ready to accept it. The Soviet Union was nevertheless prepared to seek solutions acceptable to all, on the basis, for instance, of the text of the sixth revision of draft principle 9 submitted by Canada (in document A/AC.105/C.2/L.154/Rev.6).

9. Mr. OBAKPOLOR (Nigeria) recalled that the Committee on the Peaceful Uses of Outer Space had been established in 1959 to ensure that space was utilized exlusively for peaceful purposes and that the benefits of space activities would advance the interests of all nations. With space becoming the next frontier of human activity, it was important to discuss and streamline the methods of exploring space in order to guarantee a high degree of safety. At the current thirtieth session of the Subcommittee, it was appropriate to express satisfaction at what had already been accomplished but, in view of the major technological breakthroughs made in some areas, it had become necessary to institute a legal regime guaranteeing the safety of outer space activities. In that connection, the Legal Subcommittee had made an impressive contribution to the development of international space law, an effort with which his delegation was happy to be associated.

10. The question of nuclear power sources had been discussed exhaustively at previous sessions of the Committee and its two Subcommittees for over a decade, and Nigeria's views on the matter were well known. He admired the systematic approach of both Subcommittees to the issue. At its twenty-seventh session, the Scientific and Technical Subcommittee had made a significant achievement in reaching consensus on the scientific and technical guidelines and criteria for the safe use of nuclear power sources in outer space. Those guidelines were crucial to the question of nuclear power sources aboard satellites, and would facilitate early agreement on the remaining points to be resolved, enabling a new legal regime to be adopted on the issue. At its twenty-ninth session, the Legal Subcommittee had also reached consensus on some of the legal principles relevant to the use of nuclear power sources, based on the earlier recommendations of the Scientific and Technical Subcommittee. His delegation hoped that the finishing touches could be put on the seven remaining draft principles at the current session.

11. Nigeria noted with particular interest the increasing global attention being paid to the question of space debris and the very high probability of a collision in certain orbits between space objects with a nuclear power source on board. Radioactive contamination of the environment was no longer merely a hypothetical matter. As more and more objects carrying nuclear power sources were being launched, and those no longer in operation were abandoned or left in orbit, the chances of a collision could only increase. Not only was the safety of certain orbits thus becoming increasingly threatened, but the safety of the Earth itself.

12. His delegation reiterated that it was important to bear in mind the particularly disadvantageous position of the developing countries, which

(Mr. Obakpolor, Nigeria)

possessed neither the technology needed to monitor any accidential re-entry of a nuclear powered space object nor the clean-up capability in the case of an impact in their territories, and also to safeguard their interests. The least that should be done was to adopt and observe the strictest possible regulations governing the design, manufacture and use of nuclear power sources, in order to ensure minimal levels of radioactive contamination of non-launching States, the highest safety standards for nuclear reactors and for payloads, and appropriate and adequate compensation for all types of damage resulting from accidental or uncontrolled re-entry and impact of space objects or their component parts.

13. While appreciating the efforts made by the space Powers to explore outer space for the benefit of mankind and to make space exploration a meaningful and practical scientific instrument of development, one must be mindful of the danger inherent in the method of exploration. Nuclear power sources were regarded as the most efficient system for space exploration and other interplanetary missions, but there must be strict compliance with the regulations on their use, as his and other delegations had unequivocally affirmed at various sessions of the two Subcommittees. To leave it to individual countries to investigate the issue further without setting a time-limit would be to undermine the integrity and seriousness of the Subcommittee.

14. While recognizing that some of the above-mentioned aspects had been taken into account in the recommendations adopted by both the Scientific and Technical Subcommittee and the Legal Subcommittee, his delegation believed that other draft principles would also have to be equally and fully addressed, notably those on notification of the presence on board a space object of a nuclear power source (draft principle 2), safety assessment (draft principle 4), responsibility (draft principle 8), and compensation (draft principle 9). Those draft principles should be made to reinforce the legal guidelines and criteria for the safe use of nuclear power sources, as a further incentive for strict compliance.

15. Mr. SCHAFER (Germany) apologized for a technical error that had slipped into document A/AC.105/C.2/L.154/Rev.8, which had been circulated to the members of the Subcommittee that morning, and said that because of the error the document did not correctly reflect the outcome of the consultations Germany had held with several other delegations, particularly the Canadian delegation, on the question. He therefore requested that the document should be formally withdrawn. The authors of the document were Germany, Canada, France and Sweden, and it would be reissued and circulated as soon as possible as document A/AC.105/C.2/L.183.

16. On the question of nuclear power sources, he regarded the consensus on six of the 11 draft principles under study as a major success, and hoped that it would spur progress on the other draft principles. Solutions seemed to be taking shape.

(Mr. Schafer, Germany)

17. The safe use of nuclear power sources in space was generating growing interest in Germany, and his delegation had always played an active part in the discussion and elaboration of the draft principles. During the latest session of the plenary Committee, it had, together with the Canadian delegation, submitted working paper A/AC.105/C.2/L.154/Rev.7, whose essential points were the following:

18. Draft principle 1A laid down the definition of the term "launching State" for the purposes of the set of principles. In view of the obligations under draft principle 3, the addition of draft principle 1A was meant to reinforce the confidence-building effect of the whole set of principles. Draft principle 8 reiterated the agreed text contained in the report of the plenary Committee (A/45/20, para. 104), which had felt that the text provided a basis for consensus in the near future. Draft principle 9, on compensation, clarified the issue of reparation for damage caused by accidents involving nuclear power sources. Draft principle 12 reflected the decision taken by the Legal Subcommittee in 1990, namely that the draft principles should be revised in line with the recommendation made by the Scientific and Technical Subcommittee that same year.

19. Lastly, with regard to draft principles 2 and 4 on notification and safety assessment, it had already been proposed that combining those two principles might resolve a number of still outstanding problems. Together with the Canadian, French and Swedish delegations, his own would soon submit a new draft incorporating the main ideas of the old texts of principles 2 and 4, to be published as document A/AC.105/C.2/L.183. The authors of the new draft were retaining the confidence-building aspects of the previous wording, since new draft principle 4 still made it possible, in a crisis, to obtain the necessary information from the relevant sources without delay. As to the safety assessment itself, the authors felt that the text was too long to be issued in full and that a summary covering the essential points would suffice.

20. His delegation would welcome early adoption by the Subcommittee of the remaining draft principles. Given the constructive spirit and atmosphere of cooperation that prevailed in the Committee and its Subcommittees, and bearing in mind their tradition of finding joint solutions to issues affecting all mankind, it was convinced they would be successful.

21. The CHAIRMAN said that the Subcommittee took note of the withdrawal of document A/AC.105/C.2/L.154/Rev.8.

22. Mr. TETU (Canada) reiterated the importance his delegation attached to the final formulation of the draft principles relevant to the use of nuclear power sources in outer space. No effort should be spared to achieve agreement on the pending draft principles, while taking account of all comments made earlier in the Committee and its Subcommittees, especially the Scientific and Technical Subcommittee. That said, he had no desire to reopen discussion on the substance.

23. Mr. PERRI (Brazil) said that he thought it was extremely important to hasten the final formulation of a set of draft principles relevant to the use of nuclear power sources in outer space. Given the size of Brazil's territory, the existence of nuclear power sources and sources of radiation in space were a matter of enormous concern, because there was always the possibility of the unexpected re-entry of a space object with a nuclear power source on board. The Brazilian authorities therefore had to give special attention in such cases to protecting Brazil's environment, population and territory.

24. He had carefully read document A/AC.105/C.2/L.154/Rev.8 submitted by Canada and other delegations, and he had difficulty with much of the wording. To begin with, Brazil, like the Soviet Union, had always favoured not only notification of the launching of a space object with a nuclear power source on board, but notification prior to launching. In the document submitted, however, draft principle 2 and draft principle 4 had been amalgamated, and the very concept of notification had been dropped from the text - which was in fact very different from what Brazil had expected. His Government believed that States launching objects with a nuclear power source on board into outer space had an obligation to specify the date and place of launching, because the pre-orbital phase was the most critical given the danger of a malfunction. Accordingly, neighbouring States must be able to take preventive safety measures and make arrangements in the event of a disaster. Brazil, while prepared to accept an amalgamation of draft principles 2 and 4, still insisted that the concept of the principle of notification should be emphasized, because that principle was one of those that would help build confidence and transparency with regard to international space activities.

25. Moreover, his delegation had some difficulty with accepting the definition of the terms "launching State" or "State launching" in new draft principle 1A, for it did not apply to all situations and circumstances. The launching State, in his delegation's view, was not only the State manufacturing the spacecraft, the one launching it or the one from whose territory it was launched, but all those States together. The definition was not a simple one, especially because more and more launchings were a result of international cooperation, with several countries associated with a launching. The problem was a major one, for it touched on the concept of shared responsibility.

26. That problem led to another, no less important one: compensation. In the text submitted that morning, old paragraphs 3 and 4 of draft principle 9 had been combined into one, and what concerned Brazil was the fact that reference was made to the Convention on International Liability for Damage Caused by Space Objects. Article XXIII of that Convention, however, stated that no provision of the Convention should prevent States from concluding international agreements. Instead of providing for multilateral negotiations in all cases, that was tantamount to directing States towards bilateral negotiations in damage and compensation cases, with all the inequality inherent in that type of negotiation.

(Mr. Perri, Brazil)

27. Although it wished to adopt a set of relevant draft principles as quickly as possible, Brazil could not approve a text that went against its basic interests, and believed that more work needed to be done on the three points that troubled it: notification, the definition of a launching State and compensation, all of them extremely complex issues where simplification should be avoided in the text to be adopted.

28. Mr. NOREEN (Sweden) said that the Subcommittee could not discuss a document that was not before it, and the document referred to by the representative of Brazil had been formally withdrawn. Nevertheless, he wished to clarify a point raised by the representative of Brazil, because the same wording would be found in the next version of the document.

29. It was true that the word "notification" as such did not appear in the new, amalgamated version of principles 2 and 4, but the concept of notification had not thereby been eliminated: indeed, the new draft stipulated that a State launching a space object with a nuclear power source on board should conduct a thorough and comprehensive safety assessment prior to each launch, and it also provided that detailed results of the safety assessment should be made publicly available prior to each launch. That was therefore actually equivalent to prior notification.

30. Mr. BOYER (France), referring to the comment of the representative of Germany that the plenary Committee had felt the current text of draft principle 8 provided a basis for consensus in the near future, pointed out that, as far as his delegation was concerned, that did not mean that there already was consensus on that draft principle.

The meeting rose at 11.40 a.m.